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Value added tax

**VAT Expert Group
30th meeting – 29 November 2021**

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VAT EXPERT GROUP¹

VEG No 104

SUMMARY MINUTES

**30TH MEETING
– 29 NOVEMBER 2021 –**

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¹ Group of experts on value added tax to advise the Commission on the preparation of legislative acts and other policy initiatives in the field of VAT and to provide insight concerning the practical implementation of legislative acts and other EU policy initiatives in that field.

1. APPROVAL OF THE AGENDA

The agenda (*document taxud.c.1(2021)8129396*) was not contested or discussed.

2. NATURE OF THE MEETING

The meeting took place in the form of videoconference and was not open to the public.

**3. VEG N° 102: REPORT ON THE OUTCOME OF THE WORK OF THE SUB-GROUP
“PLATFORM ECONOMY” - PRESENTATION BY THE CHAIR AND RAPPORTEUR**

The sub-group’s chair and rapporteur introduced the report on the work of the sub-group on the platform economy, outlining the background to the formation of the group, and its remit. They explained that the output of the sub-group fed into the work of the Commission and the Contractor carrying out the study on the platform economy, and that the work of the sub-group was also reflected in the papers presented to the Fiscalis workshop that took place at the end of October.

The rapporteur remarked that whilst there was a ‘clear trend’ towards making platforms more socially and fiscally responsible, the sub-group found that it was important to look at the options regarding data sharing and in particular exploring the links between Article 242a of the VAT Directive and DAC7. Another issue highlighted by the sub-group was that Member States should have a more consistent approach to the allocation of VAT numbers (in that some Member States do not give VAT numbers to SMEs, for example).

Both the chair and the rapporteur of the sub-group praised the good work of the sub-group, particularly as all meetings were remote, and considered that this collaborative approach between the VEG and the GFV would be a model for future initiatives.

The Chair thanked the sub-group members for their hard work, saying that the clear message received from business during the Fiscalis workshop was that any measure should be clear and simple to operate. The Chair reminded delegates that the sub-group remained open should any issues require further analysis.

4. VEG N° 103: CJEU CASE C-235/18 VEGA INTERNATIONAL: FUEL CARDS

The Commission services presented Working paper No 1020 of the VAT Committee, which focused on the qualification of the different supplies at stake for the purposes of the application of the VAT Directive and on the scope of the *Vega International* judgment, i.e. on the assessment as to whether under particular circumstances the issuers of fuel cards and the suppliers of these cards should be considered to supply goods rather than services.

Members were invited to express their views on the Commission services’ conclusions and on the way forward as regards the issues at stake.

The Commission services’ conclusions were summarised as follows:

- In order to determine the character of a supply in the case of transactions relating to a supply of fuel through the use of fuel cards, it is necessary to consider to whom the right to dispose of the fuel as owner is transferred.
- If it can be established that the said right to dispose of the fuel as owner is transferred to the issuer or supplier of a fuel card, the latter may be considered as supplying goods (fuel).
- The circumstances to be taken into account while carrying out the above assessment include verification as to:
 - Who takes the final decision as to the choice of the service station where the fuel can be supplied,
 - Who takes the decision as to the quality, quantity (through e.g. limit for each card) and type of fuel to be used,
 - Who decides as to the time of the purchase,
 - How to use the fuel.
- Where fuel cards constitute a mere instrument to structure the fuel supply under a purchase or sales commissionaire contract in which the commissionaire acts in its own name but on behalf of a principal, supplies received and delivered by the commissionaire, in principle, should qualify as supplies of goods (fuel).
- Since 1 January 2019, where a fuel card qualifies as a single purpose voucher, its supply could be regarded as a supply of fuel to which the card relates.

Following an exchange on the issues raised by this particular judgment, members were invited to prepare a paper setting out their views based on their experience and explaining, in particular, business models predominant in the sector.

Two members offered to coordinate works on the paper.

Several members offered to contribute to the paper and, in particular, to collect the information on the real-life business models. They commented on and referred to:

- The severe consequences of the Vega International judgment which resulted in large amounts of sticking VAT and incoherence with VAT neutrality principle;
- The complexity of supplies at stake and the fact that fuel cards are often used for a number of services linked to the usage of cars;
- The need to explore further as regards several issues mentioned in the Working paper, such as commissionaire contracts;
- The need to see Vega International in a broader context of the CJEU's case law and in the context of the discussions of the VAT Committee and VEG on e-mobility;
- Guidelines issued in a follow-up to this judgment by national tax administrations in Poland and Germany in particular.

The Chair underlined the urgency of the issue and the need to remain focused. He therefore asked for submission of the paper by end January 2022.

Members confirmed their commitment to this work and mentioned that some more time may be needed to deliver the paper, possibly until mid-February 2022.

5. INFORMATION POINTS

The Commission services presented the latest developments related to their on-going work, in particular in relation to:

5.1. VAT e-commerce update

The Commission services thanked the group for their continued support and on-going feedback in relation to the implementation of the e-commerce package.

The implementation of the e-commerce package went smoothly, although some issues still need to be resolved to help ensure the proper functioning of the new rules. Experts from both tax and customs administrations met on 15 November to discuss and examine the feasibility of possible solutions to tackle the following remaining issues at technical level:

1. Double taxation;
2. VAT refund on returned goods/cases where double taxation arises and possible solutions to simplify the VAT refund process;
3. Misuse of IOSS VAT identification numbers, ways to limit their misuse and mitigate the risk of IOSS-related fraud;
4. Customs legislation that prevents the importation of low value consignments in a Member State other than the Member State of the customer for B2B supplies, and solutions to help rectify the current issues caused by the wording of Article 221(4) UCC-IA.

Following the meeting on 15 November, Member States were asked to submit their observations in writing by 29 November. The Commission will reflect on the submissions and will propose practical solutions to resolve the above mentioned issues, taking into account the feedback received from Member States. The Commission will also urge Member States who cannot currently validate IOSS numbers in the H1 declaration to find interim or long-term solutions to this particular issue.

The Commission services further informed that, in early 2022, they will commence a comprehensive evaluation of the VAT e-commerce package. Member States will be required to reply to a targeted questionnaire, which will be launched via an EU survey. The results of this evaluation will feed into the ‘VAT in the Digital Age’ proposal. That proposal examines a number of policy options, including options which may further extend the scope of the One Stop Shop, along with amendments to the IOSS that could include removing the EUR 150 threshold and making the IOSS mandatory.

In parallel, there are several initiatives underway to improve e-commerce policy on the customs side. The Wise Persons' Group will reflect on innovative 'out of the box' ideas to address the main challenges of the customs union, in particular e-commerce.

The Commission then reported that a comprehensive e-commerce study was launched in November, which aims to identify innovative approaches to overhaul the EU e-commerce rules applicable to imports. The study encompasses all import duties and taxes.

Finally, the Commission services concluded that, overall, the implementation of the e-commerce package went smoothly and reassured its intention not to let the initial teething issues stand in the way of the ongoing 'VAT in the Digital Age' proposal.

One member mentioned that tax advisors and trainers had noticed that, in practice, the threshold in Article 34 of the VAT Directive was sometimes being overlooked. Article 59c, which provides for the new EU-wide place of supply threshold for supplies covered by Article 33(a) and Article 59 only applies if the supplier is established only in one Member State. The Commission services responded by pointing out that Article 34, which provided for the old distance sales thresholds, was removed with effect from 1 July 2021. Apart from Article 59c of the VAT Directive, the general place of supply rules for intra-Community distance sales of goods continue to apply in accordance with Article 33(a) of the VAT Directive. Given that the application of the EUR 10 000 threshold had created some confusion for Member States, this matter was brought for discussion at the VAT Committee, and guidelines are expected to be published in the near future.

Another member endorsed the Commission services' statement that the implementation of the e-commerce package went smoothly and wanted to underline their comments in relation to finding solutions to the teething problems that had been identified.

5.2. 2020 Tax Action Plan – update on the state of play

- ***Study “VAT in the Digital Age”***

The Commission services presented an update on the state of play of the VAT in the Digital Age package initiative, recalling that it is included in the 2022 Commission Work Programme and covers three topics: Digital Reporting Requirements (DRR) and e-invoicing; VAT treatment of the platform economy; and single VAT registration in the EU.

A study commissioned to an external Contractor (*Economisti Associati*) is running since last year, encompassing the aforementioned three parts in order to inform the ongoing work on the legislative proposal and the related Impact Assessment.

A virtual Fiscalis workshop with representatives of the VEG and GFV in addition to platforms and marketplaces took place at the end of May, to discuss the issues relating to the Interim Report of the Study. Another virtual Fiscalis workshop took place at the end of October to discuss the findings of the Draft Final Report, bringing again together those participants as well as representatives of the e-mobility sector. Both workshops were truly useful to get views on the problems identified, the possible policy options as well as the

assessment made on the latter. The outcome of these two workshops is feeding the Report of the Contractor, which is due by the beginning of January. The Commission services took the opportunity to thank the VEG members who participated in the Fiscalis workshops for their active involvement in the fruitful discussions.

The Commission further informed that certain aspects of the DRR and the platform economy will be further discussed with Member States at the next meeting of the Group of the Future of VAT that will take place on 6 December, since clarification and specific analysis are still needed in those two parts of the Study.

Finally, the Commission announced that the Public Consultation on the three topics will be launched soon and will run for 12 weeks. One member wondered whether this period could be extended in view of the approaching Christmas period; to which the Commission services responded that such an extension is unfortunately not possible. The questionnaires are being finalised and the deadline to complete them will probably be set towards the end of December.

- ***VAT Committee proposal***

The Commission services then presented the latest developments on the VAT Committee Proposal to transform the VAT Committee into a comitology committee, which would assist the Commission in the adoption of binding implementing measures by qualified majority voting. These binding implementing measures would be limited to non-sensitive areas and to technical interpretative issues of the VAT Directive.

This proposal was discussed twice in Council (February and April 2021), and although in general Member States could support the overall objective of the proposal, many delegations expressed their reservations, especially as regards the shifting of power from the Council to the Commission, and moving towards the Qualified Majority Voting. Many delegations took the view that the current system could be improved, through the presentation by the Commission of more proposals for Council implementing acts based on Article 397 of the VAT Directive. The Commission underlined that this was not their preferred option as it entails a lengthy process and might lead to uncertain outcomes; nevertheless, there was no consensus in the Council for alternative solutions.

One member, yet recognising the achievements (i.e. more transparency) accomplished by the VAT Committee in the last couple of years, expressed his disappointment with the non-abidance of the guidelines by some Member States. More transparency on the position of Member States in respect of the guidelines would be appreciated. As to whether the proposal gave rise to genuine discussions in Council, the Commission replied in the affirmative, but underlined the clear divergences of views of Member States. Tentative to narrow down or better frame the proposal was unsuccessful due to reasons beyond the Commission's control.

The Commission services finally announced that discussions on this issue would continue at the next GFV meeting of 6 December, at which Member States will be requested to identify the areas of VAT law where implementing measures could be appropriate to ensure more uniform application of the VAT Directive, focusing on the guidelines already agreed by the VAT Committee.

- *VAT package on tourism*

In February 2021, the Commission adopted an evaluation on the travel agents scheme², on which the VEG had an occasion to comment during its 29th meeting. The evaluation sets out the achievements and the shortcomings of the scheme in need of being addressed.

As a follow up to that evaluation, the Commission services informed the VEG of a call for a new study which has been opened to collect data on the travel and tourism sector and assess the relevant VAT rules. The study is to cover three topics: 1) the special scheme for travel agents, 2) the VAT rules on passenger transport and 3) the exemption on supply of goods to non-EU travellers. It should support the Commission in preparing a legislative VAT package on tourism foreseen in 2023.

- *Review of VAT rules for financial and insurance services*

The Commission services reminded the review of the VAT rules for financial and insurance services which is ongoing. They noted that the summary report on the outcome of the public consultation, launched at the beginning of 2021 and closed on 3 May, was published in August 2021 and is available on the [Have Your Say Portal](#) featured on the Europa website³.

Due to the complexity of the rules under review and the scope of this project, the timing has been extended. It is therefore unlikely for a legislative proposal to be tabled before 2023.

6. AOB

The next meeting of the group will most likely take place in the first half of next year. Given the current health crisis situation, it cannot yet be determined whether a physical meeting will be possible.

7. LIST OF PARTICIPANTS

Commission services and the members of the VAT Expert Group as published in the Register of Commission Expert Groups⁴, as well as a delegate of the GFV representing Germany and chair of the sub-group “Platform Economy” for Point 2 of the Agenda.

² Commission Staff Working Document – Evaluation – Special scheme for travel agents of the Council Directive 2006/112/EC on the common system of value added tax (SWD(2021) 32 final).

³ Contributions can be found in [this folder](#) of the Public Documents Repository – VAT.

⁴ <http://ec.europa.eu/transparency/regexpert/index.cfm?do=groupDetail.groupDetail&groupID=2813&NewSearch=1&NewSearch=1>